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SENATE

REPORT
99-208

# HOME AND COMMUNITY BASED SERVICES FOR THE ELDERLY ACT OF 1985

DECEMBER 4 (legislative day, DECEMBER 2), 1985.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

## REPORT

[To accompany S. 1181]

[Including cost estimate of Congressional Budget Office]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1181) to establish a program for the provision of home and community based services to elderly individuals, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

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## I. SUMMARY OF THE BILL

The bill establishes within the PHS Block Grant authority a separate Home and Community Based Services Block Grant program to the States. The bill authorizes $100 million for fiscal year 1987, $100 million for fiscal year 1988, and $100 million for fiscal year 1989 for grants to States for home and community-based activities and services. States can use their fiscal year 1987 through 1989 allotments to:

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(1) Identify and locate elderly eligible individuals for such services;

(2) Plan and manage services to be provided to such individuals;

(3) Educate the public and medical and social service professionals concerning the availability of such services;

(4) Encourage and enhance the participation of families and voluntary organizations in the provision of such services;

(5) Train personnel to provide such services through the use of model curricula which include proper standards and quality assurance mechanisms in such training;

(6) Coordinate long-term-care services provided to elderly individuals by public and private institutions and voluntary organizations in order to eliminate duplication in the provision of such services.

## II. History of S. 1181

S. 1181, a bill which would establish a program of grants to the States for home and community-based services for elderly individuals, was introduced May 21, 1985, by Senator Hatch and others and referred to the Committee on Labor and Human Resources. This bill had grown out of legislative initiatives begun by Senator Hatch in 1981 to expand the availability of cost-effective home and community-based services.

The block grant approach for enhancing States' abilities to offer cost-effective community-based services to the frail elderly was originally embodied in S. 1539, introduced by Senator Hatch in 1983. This bill was considered in hearings held by the Committee in July 1983 and included in S. 242, the Employment Opportunities Act of 1983, reported by the Committee July 14, 1983.

In 1984, similar provisions were included in S. 2301, the Health Services, Preventive Health Services, and Home and Community-Based Services Act of 1984. This bill was ordered reported March 21, 1984; however, the Home and Community-Based Services Block Grant provisions were not included in the bill as passed by the Senate.

S. 1181, as introduced by Senator Hatch in 1985, differs from previous versions of this legislation in three principal ways. Its authorization levels have been reduced to $100 million for each of the fiscal years 1987 through 1989. The bill also simplifies the list of activities and services which may be supported under the block. In addition, it clarifies that home and community-based services funded under the block should be targeted on the most frail of elderly persons; that is, those in institutions or at risk of institutionalization. S. 1181 was ordered reported by the Committee, with amendment, November 19, 1985.

## III. Background

Long-term care encompasses a wide array of services offered in a variety of settings ranging from nursing home and other institutions to adult day care centers and other innovative non-institutional arrangements in the patient's own home. Community-based long-term care typically refers to such noninstitutional services as

home health care (including part-time skilled nursing care and certain other medically related services); physical, speech, and occupational therapy; social services (including adult day care, counseling, transportation, friendly visiting); nutritional and health education, homemaker, chore, and personal services (including cooking, housekeeping, home maintenance, feeding, and shopping).

Many observers feel that the present system of long-term care in the United States is biased toward institutional care. By and large, publicly financed health programs provide substantially more support for hospital and nursing home care than for home health and other community-based services. This is true, for example, for both the Medicare and Medicaid programs, two of the principal but limited sources of Federal support for home health care services.

Medicare, authorized under Title XVIII of the Social Security Act, is a Federal health insurance program for most persons aged 65 and over, persons, under 65 entitled to Federal disability benefits, and certain individuals with end-stage renal disease. Medicare's coverage for these persons tends to focus on acute care services of a relatively short-term nature. While there is no limit on the number of covered home health visits under the program, such visits are restricted to those persons who are homebound and in need of part-time or intermittent skilled nursing care, or physical or speech therapy, preconditions which generally exclude large numbers of chronically ill persons requiring extended care and a combination of medical-social-personal type services. Medicare's definition of covered home health services also serves to limit the program's usefulness for persons with chronic care needs. The services often cited as most needed to permit an individual to avoid institutionalization—homemaker/chore, home-delivered meals, transportation, and respite care—are the very types of services not covered by Medicare.

Similarly, the Medicaid program contains incentives for institutional, as opposed to home and community-based care, even though the Congress has attempted to reduce the impact of these incentives by including in the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) a provision which allows the Secretary of HHS to waive Federal requirements to enable a State to provide home and community-based services to individuals otherwise requiring nursing home services which would be reimbursed by Medicaid.

Medicaid, authorized under Title XIX of the Social Security Act, is a Federal-State matching program providing medical assistance for certain low-income persons. The General Accounting Office (GAO) has observed that Medicaid's eligibility policies and restrictive benefits have created financial incentives to use nursing homes. State Medicaid programs have offered more extensive and often full coverage for long-term care services provided in nursing homes, while support to the chronically impaired living in the community has usually been limited. In addition, certain elderly, ineligible for Medicaid while living in the community, may become eligible once they enter a nursing home, if the State has different income standards for nursing home residents as opposed to community residents. Others become eligible for Medicaid once they deplete their resources after initially entering the nursing home as privately paying patients.

These incentives for institutional care have important implications for that portion of the Nation's gross national product devoted to health care as well as for Federal expenditures requires for long-term care services under various entitlement programs. In 1965, the Nation's total expenditures for nursing home care amounted to $21.1 billion; by 1983, they had increased to $29 billion. These expenditures are expected to reach $67.1 billion by 1990. Of the 1983 total of $29 billion for nursing home care, 50 percent ($140 billion) was paid by public programs. By far the largest portion of public expenditures for nursing home care was funneled through the Medicaid program, a total of $124 billion in 1983. This $12.4 billion represented nearly 43 percent of all spending and 89 percent of public spending for nursing home care in 1983.

In addition, the U.S. population over age 65 will increase markedly in the next 50 years. Today about 12 percent of the Nation's population is over age 65. By the year 2030, the 55 million elderly projected for that time will comprise 22 percent of the total U.S. population. Among the elderly, the proportion of those age 75 plus will increase even faster then those ages 65–74. Today, 38 percent of those age 65 plus are also over age 75; more than 9 percent are age 85 plus. By the year 2030, the age 75 plus group is expected to represent 45 percent and those 85 plus will represent 12 percent of those over 65.

Roughly, 5 percent of the total U.S. population over age 65 are currently residents of nursing homes. But the proportion of those 75 and older in nursing homes is much greater—22 percent of those over age 85 are in nursing homes.

Assuming current utilization rates, estimates show that the number of nursing home residents (currently about 1.3 million) will increase by 54 percent over the next 20 years and by 132 percent—to a level of almost 3 million—by the year 2030. Home and community-based services is a means to lessen these totals and reduce their attendent costs.

## IV. Committee Views

As noted above, S. 1181 is similar to previous legislation considered and reported by the Committee. The Committee's bill establishes within the PHS block authority a separate Home and Community-Based Services Block Grant program to the States. For this block grant, the bill authorizes $100 million for each of the fiscal years 1987 through 1989.

By reporting S. 1181, the Committee emphasizes and affirms its commitment to an approach which is particularly relevant and appropriate at this time. The Committee is well aware that the present system of long-term care in the country is biased toward institutional care and that publicly financed health programs provide substantially more support for hospital and nursing home care than for home health and other community-based services. The Committee is also convinced that home and community-based care can result in significant cost-savings over the longrun for elderly individuals. Unless viable community-based services are developed to prevent unnecessary institutionalization of the elderly, the Nation can only expect that the number of persons in nursing

homes will grow, especially as the proportion of elderly individuals in the population increases at a faster rate than other age categories.

The Committee amended the bill to add the following language to Section 1910(D)(b)(5) at the end after the semicolon: "or through agencies and providers rendering services under the State plan approved under title III of the Older Americans Act of 1965." It was the Committee's intention with this amendment to ensure that States make reasonable efforts to provide services authorized by this law through State and Area Agencies on Aging rendering services under the Older Americans Act title III state plan, as well as through agencies rendering service under the State's Medicaid plan. In many states, the Older Americans Act network is deeply involved in providing long-term-care services as part of the State's long-term-care program. The amendment would facilitate reliance on the Older Americans Act network in those States in which this is already occuring. In addition, the Medicaid agencies tend to be health oriented and the Title III agencies social services oriented. The Committee wishes to emphasize with this amendment that it believes social services to be an important component of the continuum of long-term-care services whose availability should be facilitated with this new program.

The Committee believes that the block grant approach for home and community-based services is especially relevant at this time. Over the past several years, States have begun to focus increased attention on restructuring their existing policies and programs on long-term care. States have established commissions or task forces to plan for a reorientation for State programming and/or have developed new approaches to the coordination of available Federal and State funds to support a variety of community-based services.

A block grant for home and community-based services will assist the States and localities not only by providing support for planning and coordinating existing Federal, State, and local programs for community-based long-term care. It will also provide assistance for an expansion of services. The Committee believes that it is important to build upon past and current State activities and not create another Federal program having still one more set of requirements for the States. The Committee's block grant approach will provide the necessary incentives for improving the current system of care by allowing States to continue and/or initiate innovative programs to coordinate and expand their long-term-care systems. At the same time, a block grant will assure States the flexibility they need to provide services efficiently and effectively.

The Committee is aware that many chronically ill elderly individuals are, in fact, more economically and appropriately cared for in long-term-care facilities. However, late in the 97th Congress, the Government Accounting Office published a report (GAO/IPE-83-1) entitled "The Elderly Should Benefit From Expanded Home Health Care, But Increasing These Services Will Not Insure Cost Reductions." This study compared several programs around the country and found that when "expanded home health care services were made available to the chronically ill, elderly, longevity and client reported satisfaction were improved." The report found that possibilities for cost saving existed where home health services could be

used as a means to prevent early or unnecessary institutionalization and reducing hospital readmissions and length of stay. In commenting on the report, HHS concurred that "targeting services to people who can be served the most cost-effectively in the community is the most critical issue in the expansion of home and community-based health care service."

By reporting S. 1181, the Committee intends to authorize services which will reduce the number of individuals inappropriately hospitalized or institutionalized simply because community services are not available. At the same time, the Committee recognizes that for community and home services to be cost effective, the total cost of services provided an individual must be less than the cost of institutional care for that individual. Therefore, the Committee has included a statutory requirement that the cost of services per individual must not exceed the cost of institutionalization for that individual.

Recognizing that long-term care is provided through a variety of Federal, State, and county programs, including private, public, proprietary, and non-proprietary organizations, the Committee wishes to emphasize the importance of coordination and avoiding duplication of services. At least 80 Federal programs assist persons with long-term-care problems, either directly or indirectly through cash assistance, in-kind transfers, or provision of goods and services. These programs often respond in a manner that is problem-specific, categorical in nature, or targeted at specific client groups. For example, certain programs provide health services while excluding social services; others are oriented to the elderly to the exclusion of the younger disabled. Some programs carry income eligibility requirements; others do not.

In addition to the Medicare and Medicaid programs discussed above, other major Federal programs, such as the Older Americans Act and the Social Services Block Grant program under Title XX of the Social Security Act, provide support for community-based long-term care services. The Older Americans Act carries a broad mandate to improve the lives of older persons across a number of areas, and authorizes formula grants to States for supportive and nutrition services. One of the Act's mandates is to provide a continuum of care for the vulnerable elderly. Under Title III of the Older Americans Act, grants are made to State agencies on aging for planning and coordination of, and advocacy for, services for older persons. Under the Title XX block grant program, States receive reimbursement for a variety of community-based long term care services, such as homemaker, chore, and home management services, and adult day care services.

The Committee intends that Home and Community Based Block Grant funds supplement funds available under these various programs. It also expects that the block's funds will be used to assist States in coordinating available resources so as to maximize Federal, State, and local service dollars available for home and community-based care.

## V. Tabulation of Votes Cast in Committee

In Executive Session of the Committee on Labor and Human Resources on Tuesday, November 19, 1985, the Chairman offered S. 1181, as introduced on May 21, 1985. Senator Hatch offered an amendment to ensure that individuals utilizing their options to purchase services with a voucher provided by the State obtain those serivces from responsible home health providers. This amendment is intended to protect purchases when they are "buying" services independently with a voucher.

Senator Grassley offered an amendment to require states to make reasonable efforts to provide services through Area Agencies on Aging and providers rendering service under the Older Americans Act Title III State plan, as well as from agencies rendering services under the State's Medicaid plan.

The amendments passed by voice vote and S. 1181, as amended, was then ordered reported from Committee without dissent by voice vote.

U.S. Congress,
Congressional Budget Office,
*Washington, DC, November 20, 1985.*

Hon. Orrin G. Hatch,
*Chairman, Committee on Labor and Human Resources,*
*U.S. Senate,*
*Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1181, the Home and Community Based Services for the Elderly Act of 1985, as ordered reported by the Senate Committee on Labor and Human Resources on November 19, 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes.

Sincerely,

Rudolph G. Penner,
*Director.*

## VI. Congressional Budget Office Cost Estimate

1. Bill number: S. 1181.

2. Bill title: Home and Community Based Services for the Elderly Act of 1985.

3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on November 19, 1985.

4. Bill purpose: To establish a program for the provision of home and community based services to elderly individuals.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

| | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|---|---|---|---|---|
| Authorization level | | 100.0 | 100.0 | 100.0 | |
| Estimated outlays | | 56.5 | 87.3 | 97.0 | 43.5 |

*Basis of Estimate*

The authorization level for the block grant is stated in the bill. We assume authorized amounts are fully appropriated at the beginning of each fiscal year. Outlays have been estimated using spendout rates computed by CBO for similar block grant activities in the Public Health Service.

This bill would create a new program giving block grants to states to provide home and community based services to elderly individuals. States could use the funding for identifying those eligible, planning and managing services, training personnel, and coordinating long-term care services in the community. Services would be targeted toward low-income elderly individuals who do not currently receive home and community based care under Medicaid. Grants to states would be allocated on the basis of the number of elderly living in the state.

6. Estimated cost to State and local government: The budgets of state and local governments would not be affected directly by the enactment of this bill. The bill requires no state matching funds and specifically states that federal funds provided would be used to supplement and not supplant state, local and other non-federal funds that might otherwise be used for similar activities.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Carmela Dyer (226-2820).

10. Estimate Approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

## VII. Section-by-Section Summary

Section 1 cites the title of the bill as the "Home and Community-Based Services for the Elderly Act of 1985."

Section 2 amends part A of title XIX of the PHS Act by adding a subpart 2—Home and Community-Based Services.

### AUTHORIZATION OF APPROPRIATIONS

New section 1910C of the PHS Act authorizes appropriations of $100 million for each of the fiscal years 1987 through 1989 for allotments to the States under the Home and Community-Based Services Block.

### ALLOTMENTS

New section 1910D(a) specifies the method by which allotments would be made to the States under the Home and Community-Based Services Block. Each State would receive an amount based on the ratio of the total number of elderly individuals residing in the State to the total number of elderly individuals in all States, multiplied by a weighting factor of the proportion of a State's population that is elderly compared to the proportion of the Nation's population that is elderly. Elderly is defined as persons 65 years of age and older. The allotment for each State, the District of Columbia, and Puerto Rico could not be less than one-half of one percent of a fiscal year's appropriation. Allotments for the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands could not be

less than one-fourth of one percent of a fiscal year's appropriation, and allotments for American Samoa and the Commonweath of the Northern Marina Islands could not be less than one-sixteenth of one percent of the apppropriation.

New section 1910D(b) provides that funds appropriated for the block but not allotted to certain States would be allocated among the remaining States in proportion to the amounts they received. These allotments would be available for distribution if (1) one or more States have not submitted an application or description of activities as required under this block grant authority, (2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or (3) some State allotments are offset or repaid.

New section 1910D(c) requires the Secretary to reserve from a State's allotment an amount which would be provided directly to an Indian tribe or tribal organization, if the governing body of the tribe or tribal organization requests direct funding and if the Secretary determines that the tribe would be better served by a direct grant. Direct grants to tribes would be in an amount equal to that which bears the same ratio to the State's allotment as the total number of elderly individuals in the tribe bears to the total number of elderly individuals residing in the State. In order to be eligible for a direct grant, the tribe or tribal organization would be required to submit to the Secretary a plan which meets prescribed criteria.

### PAYMENT UNDER ALLOTMENTS TO STATES

New section 1910E requires the Secretary to make block grant payments to the States according to the provisions of section 6503(a) of title 31, U.S.C. Any amount paid to a State but remaining unobligated at the end of a fiscal year would be available the next year for the block's purposes.

### USE OF ALLOTMENTS

New section 1910F(a) authorizes States to use their allotments to provide home and community-based services to elderly individuals. These services may include activities to:

(1) Identify and locate elderly persons eligible for home and community-based services;

(2) Plan and manage services to be provided;

(3) Educate the public and medical and social service professionals about the availability of these services;

(4) Encourage and enhance the participation of families and voluntary organizations in the provision of services;

(5) Train personnel to provide home and community-based services through the use of model curricula which include proper standards and quality assurance mechanisms for training; and

(6) Coordinate long-term care services in order to eliminate duplication in the provision of services.

States may also use their allotments to provide home and community-based services through health maintenance organizations

and competitive medical plans that have entered into contracts to provide health care services to elderly Medicare benficiaries.

New section 1910F(b) requires that not more than 50 percent of a State's allotment be used in FY 1987 to plan the services and activities that will be provided under the block, and that not more than 10 percent be used for such purposes after FY 1987.

New section 1910F(c) authorizes the Secretary, if requested by a State, to provide technical assistance in planning and operating activities to be carried out under the block.

New section 1910F(d) prohibits States from using block grant funds for:

(1) Inpatient services;

(2) Cash payments to intended recipients of services, except that States may use their allotments to establish voucher systems for home and community-based services, with providers of services presenting vouchers to the State for redemption;

(3) The purchase or improvement of land, the purchase, construction or permanent improvement (other than minor remodeling) of any building or facility, or the purchase of major medical equipment, except with special waiver;

(4) Satisfying any requirement for the expenditure of nonfederal funds as a condition for the receipt of Federal funds; or

(5) Providing services whose total cost to the Federal government would exceed the total cost of the institutionalization of an individual.

APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS

New section 1910G(a) requires a State to submit to the Secretary an application for a grant under the Home and Community-Based Services Block. The application would be in the form and submitted by the date required by the Secretary. The application would also contain assurances that the State will meet various requirements specified below.

New section 1910G(b) requires the chief executive officer of the State to:

(1) Certify that the State agrees to use its block grant funds according to the block's various requirements;

(2) Establish an appropriate plan and mechanism to coordinate activities of State agencies which administer programs relating to health, welfare, rehabilitation, and the elderly with the provision of home and community-based services by State and local agencies and public and private institutions and organizations;

(3) Designate or establish a State agency that will ensure, to the maximum extent feasible, that services provided under this block will not duplicate services provided under other provisions of Federal law;

(4) Certify that the State will coordinate home and community-based services provided under this block with services provided by voluntary, religious, and community organizations and local governments;

(5) Certify that the State will make reasonable efforts to provide services under this block grant through agencies and pro-

viders rendering services under Medicaid or title III of the Older Americans Act;

(6) Certify that the State will, to the maximum extent feasible, provide home and community-based services under this block to low-income elderly individuals who are not receiving equivalent services under the State's Medicaid plan;

(7) Certify that home and community-based services funded under this block will not duplicate services provided under a State's home and community-based Medicaid waiver program;

(8) Certify that block grant funds will supplement and increase the level of State, local, and other non-Federal funds that would otherwise be available for home and community-based services, and will in no event supplant State, local, and other non-Federal funds.

New section 1910G(c) requires the chief executive officer of a State, as part of the State's application for a grant, to prepare and furnish to the Secretary a description of the intended use of block grant funds, including information on the programs, activities, and services to be supported and provided. This description must be made public within the State in such a manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal. The description would be revised throughout the year as may be necessary to reflect substantial changes in programs and activities supported with block grant funds, and these changes must be made public to facilitate comment.

New section 1910G(d) specifies that certain other general provisions in title XIX for Health Block Grants would apply to the Home and Community-Based Services Block, except when these are inconsistent with the new block. Provisions which would apply to the Home and Community-Based Services Block include reductions in a State's allotment for supplies and equipment and the expenses of a Federal employee when furnished in connection with activities of the block; reports and audits; withholding; nondiscrimination; and criminal penalty for false statements.

New section 1910G(e) requires that the State's annual report to the Secretary on its activities under the block include an analysis of the cost-effectiveness of the services provided.

DEFINITIONS

New section 1910H defines "elderly individual" (other than for purposes of determining the amount of a State's allotment) as a person who has attained the age of 65 and who (1) resides at home and is at risk of institutionalization because of limitations in the ability to function independently; (2) is a patient in a hospital who is at risk of prolonged hospitalization, and who could be cared for in a long-term care institution or who could return to the community if home and community-based services are available; or (3) is a patient in a skilled nursing facility or an intermediate care facility who could return to the community if home and community-based services are available.

This section specifies that the terms "Indian tribe" and "tribal organization" have the same meaning given these terms in the Indian Self-Determination and Education Assistance Act."

New section 1910H also makes certain technical and conforming amendments to title XIX.

Section 3 of the bill specifies the effective date of these provisions as October 1, 1986.

## VIII. Changes in Existing Law

In compliance with rule XXVI, paragraph 12 of the Standard Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### Public Health Service Act

* * * * * * *

### TITLE XIX—BLOCK GRANTS

**[Part A—Preventive Health and Health Services Block Grant]**

*Part A—Preventive Health, Health Services, and Home and Community Based Services*

*Subpart 1—Preventive Health and Health Services*

AUTHORIZATION OF APPROPRIATIONS

Sec. 1901.* * *

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ALLOTMENTS

Sec. 1902. (a)(1) * *

* * * * * * *

(d)(1) If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this **[**part**]** *subpart* be provided directly by the Secretary to such tribe or organization, and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this **[**part**]** *subpart*,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).

* * * * * * *

USE OF ALLOTMENTS

SEC. 1904. (a)(1) Except as provided in subsections (b) and (c), amounts paid to a State under section 1903 from its allotment under section 1902(a) and amounts transferred by the State for use under this [part] *subpart* may be used for the following: * * *

* * * * * * *

(3) The Secretary may provide technical assistance to States in planning and operating activities to be carried out under this [part] *subpart*.

(b) A State may not use amounts paid to it under section 1903 to—

(1) provide inpatient services,

(2) make cash payments to intended recipients of health services,

(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds, or

(5) provide financial assistance to any entity other than a public or nonprofit private entity.

Except as provided in subsection (a)(1)(E), the Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this [part] *subpart*.

* * * * * * *

APPLICATION AND DESCRIPTION OF ACTIVITIES

Sec. 1905(a) * * *

* * * * * * *

(c) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State—

(1) agrees to use the funds allotted to it under section 1902 in accordance with the requirements of this [part] *subpart*;

(2) agrees to establish reasonable criteria to evaluate the effective peformance of entities which receive funds from the allotment of the State under this [part] *subpart*; and procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.

(3) agrees to permit and cooperate with Federal investigations undertaken in accordance with section 1907;

(4) has identified those populations, areas, and localities in the State with a need for the services for which funds may be provided by the State under this [part] *subpart*;

(5) agrees that Federal funds made available under section 1903 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are pro-

vided under that section and will in no event supplant such State, local, and other non-Federal funds; and

(6) has in effect a system to protect from inappropriate disclosure patient and rape victim records maintained by the State in connection with an activity funded under this [part] *subpart* or by any entity which is receiving payments from the allotment of the State under this [part] *subpart*.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(d) The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1903 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this [part] *subpart*, and any revision shall be subject to the requirements of the preceding sentence.

* * * * * * *

*Subpart 2—Home and Community Based Services*

*AUTHORIZATIONS OF APPROPRIATIONS*

*SEC. 1910C. For the purpose of allotments to States to carry out the activities described in section 1910F, there are authorized to be appropriated $100,000,000 for fiscal year 1987, $100,000,000 for fiscal year 1988, and $100,000,000 for fiscal year 1989.*

*ALLOTMENTS*

*SEC. 1910D. (a)(1) Except as provided in paragraph (2), the Secretary shall allot to each State for each fiscal year from the amounts appropriated under section 1910C for such fiscal year an amount equal to the product of—*

*(A) the total amount appropriated for such fiscal year, multiplied by*

*(B) the ratio (stated as a percentage) that the total number of elderly individuals residing in the State bears to the total number of elderly individuals residing in the United States, multipled by*

*(C) the quotient of—*

*(i) the ratio (stated as a percentage) that the total number of elderly individuals residing in the State bears to the total population of the State, divided by*

*(ii) the ratio (stated as a percentage) that the total number of elderly individuals residing in the United States bears to the total population of the United States.*

*(2) Notwithstanding paragraph (1)—*

*(A) the total amount of the allotment for each of the several States, the District of Columbia, and Puerto Rico for each fiscal year shall not be less than one-half of 1 percent of the total amount appropriated under section 1910C for such fiscal year;*

*(B) the total amount of the allotment for each of the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands for each fiscal year shall not be less than one-fourth of 1 percent of the total amount appropriated under section 1910C for such fiscal year; and*

*(C) the total amount of the allotment for each of American Samoa and the Commonwealth of the Northern Mariana Islands for each fiscal year shall not be less than one-sixteenth of 1 percent of the total amount appropriated under section 1910C for each fiscal year.*

*(3) For purposes of this section, the term "elderly individual" means an individual who has attained the age of 65 years.*

*(b) To the extent that all of the funds appropriated under section 1910C for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—*

*(1) one or more states have not submitted an application or description of activities in accordance with section 1910G for such fiscal year;*

*(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or*

*(3) some States allotments are offset or repaid under section 1906(b)(3) (as such section applies to this subpart pursuant to section 1910G(e));*

*such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.*

*(c)(1) If the Secretary--*

*(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under the subpart be provided directly by the Secretary to such tribe or organization, and*

*(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subpart,*

*the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).*

*(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved under subsection (a) as the total number of elderly individuals in the tribe during such fiscal year bears to the total number of elderly individuals residing in the State during such fiscal year.*

*(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the elderly individuals for whom such a determination has been made.*

*(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.*

*PAYMENTS UNDER ALLOTMENTS TO STATES*

*SEC. 1910E. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1910D (other than any amount reserved under subsection (c) of such section) from amounts appropriated for that fiscal year.*

*(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.*

*USE OF ALLOTMENTS*

*SEC. 1910F. (a)(1) Except as provided in subsections (b) and (d), amounts paid to a State under section 1910E from its allotments under section 1910D for any fiscal year may be used to provide home and community based services to elderly individuals. Such services may include activities to (A) identify and locate elderly individuals eligible for such services, (B) plan and manage services to be provided to such individuals, (C) educate the public and medical and social service professionals concerning the availability of such services, (D) encourage and enhance the participation of families and voluntary organizations in the provision of such services, (E) train personnel to provide such services through the use of model curricula which include proper standards and quality assurance mechanisms for such training, and (F) coordinate long-terms care services provided to elderly individuals by public and private institutions and voluntary organizations in order to eliminate duplication in the provision of such services and the provision of services under this subpart and to maximize the use of funds provided under this subpart and other Federal laws.*

*(2) A State may use amounts paid to it under section 1910E to provide home and community based services to elderly individuals through grants to eligible organizations who have entered into contracts under section 1876(g) of the Social Security Act for projects to demonstrate the cost effectiveness of providing home and community based services to elderly individuals as part of comprehensive health care services provided by such organizations. As a condition of receipt of a grant under this paragraph, a State shall require an eligible organization to use amounts provided under such grant only for the provision of home and community based services to elderly individuals.*

*(b) Of the amounts paid to a Statement under section 1910E—*

*(1) not more than 50 percent of such amounts may be used by the State in fiscal year 1986, 1987 to plan services and activities to be provided under this subpart; and*

*(2) not more than 10 percent of such amounts may be used by the State in any fiscal year beginning after fiscal year 1987 to plan such services and activities.*

*(c) The Secretary, if requested by a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this subpart.*

*(d) A State may not use amounts paid to it under section 1910 to—*

*(1) provide inpatient services;*

*(2) make cash payments to intended recipients of services, except that a State may use amounts paid to it under section 1910E to establish a system under which—*

*(A) the State provides vouchers to elderly individuals which may be used by such individuals to pay make payments for home and community based services to providers of such services who meet established standards for training and the delivery of such services; and*

*(B) such providers present such vouchers to the State for redemption for cash payments for the provision of such services;*

*(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;*

*(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or*

*(5) provide services under this subpart to an individual if the total cost to the Federal Government of providing such services would exceed the total cost of institutionalization of such individual.*

*The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subpart.*

*APPLICATION AND DESCRIPTION OF ACTIVITIES REQUIREMENTS*

*SEC. 1910G. (a)(1) In order to receive an allotment for a fiscal year under section 1910D each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.*

*(2) Each application required under paragraph (1) for an allotment under section 1910D for a fiscal year shall contain assurances that the State will meet the requirements of subsection (b).*

*(b) As part of the annual application required by subsection (a) for an allotment for any fiscal year, the chief executive officer of each State shall—*

*(1) certify that the State agrees to use of the funds allotted to it under section 1910D in accordance with the requirements of this subpart;*

*(2) provide assurances that such chief executive officer will establish an appropriate plan and mechanism to coordinate activities of State agencies which administer programs relating to health, welfare, rehabilitation, and the elderly with the provision of home and community based services by State and local agencies and public and private institutions and organizations;*

*(3) provide assurances that such chief executive officer will designate or establish a State agency to administer funds pro-*

*vided under this subpart and the plan developed under paragraph (2) in a manner which will insure, to the maximum extent feasible, that services provided to elderly individuals under this subpart will not duplicate services to elderly individuals provided under other provisions of Federal law;*

*(4) certify that the State will coordinate the provision of home and community based services with funds provided under this subpart with activities conducted to provide such services by voluntary, religious, and Community organizations and local governments;*

*(5) provide assurances that the State will make reasonable efforts to provide services under this subpart through agencies and providers rendering services under the State's medicaid plan approved under title XIX of the Social Security Act or through agencies and providers rendering services under the State plan approved under title III of the Older Americans Act of 1965;*

*(6) provide assurances that the State will, to the maximum extent feasible, provide home and community based services under this subpart to elderly individuals who are low income individuals and who are not receiving equivalent home and community based services under the State's medicaid plan approved under title XIX of the Social Security Act;*

*(7) provide assurances that, for any period in which a waiver is in effect in the State under section 1915(c) of the Social Security Act, funds paid to the State under section 1910E will be used to provide home and community based services which do not duplicate services provided pursuant to such waiver; and*

*(8) certify that the State agrees that Federal funds made available under section 1910E for any period will be so used to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.*

*(d) The chief executive officer of a State shall, as part of the application required by subsection (a) for any fiscal year, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1910E for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subpart, and any revision shall be subject to the requirements of the preceding sentence.*

*(E) Except where inconsistent with the provisions of this subpart, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909*

*shall apply to this subpart in the same manner as such provisions apply to supbart 1 of this part.*

*(f) Each report submitted by a State to the Secretary under section 1906(a)(1) (as such section applies to this subpart pursuant to subsection (e) of this section) shall include an analysis of the cost effectiveness of providing home and community based services to elderly individuals under this subpart.*

*DEFINITIONS*

*SEC. 1910H. For purposes of this subpart:*

*(1) The term "elderly individual" (other than for the purposes of section 1910D) means an individual who has attained the age of 65 years and who—*

*(A) resides at home and is at risk of institutionalization because of limitations on the ability of such individual to function independently;*

*(B) is a patient in a hospital who is at risk of prolonged hospitalization, and who could be cared for in a long-term care institution or who could return to the community if home and community based services are available; or*

*(C) is a patient in a skilled nursing facility or an intermediate care facility who could return to the community if home and community based services are available.*

*(2) The terms "Indian tribe" and "trial organization" have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance act.*

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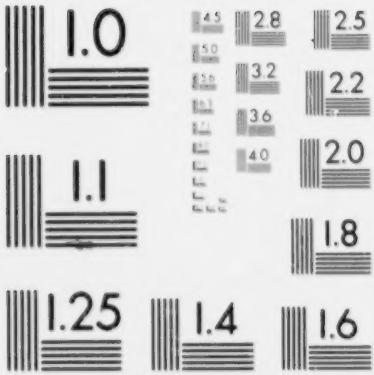


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